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TO:	FROM:
Naresh Vig	Kent J. Sieffert
COMPANY:	DATE:
U.S. Patent & Trademark Office	OCTOBER 23, 2002
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RE:	YOUR REFERENCE NUMBER:
	09/504,159

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY

NOTES/COMMENTS:

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OFFICIAL OCT 23 2002
GROUP 3600

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Lalitha Vaidyanathan; John Quinn; Ahmed Khaishgi; Cara Cherry	Examiner:	Naresh Vig
Serial No.:	09/504,159	Group Art Unit:	3629
Filed:	February 15, 2000	Docket No.:	1018-001US01
Title:	ELECTRONIC DISPUTE RESOLUTION SYSTEM		

CERTIFICATE UNDER 37 CFR 1.8: I hereby certify that this correspondence is being deposited via facsimile with the Commissioner for Patents, Washington, D.C. 20231 on Oct. 23, 2002.

By: Samantha J. Rupert

Name: Samantha J. Rupert

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BOX AF
Commissioner for Patents
Washington, D.C. 20231

OCT 23 2002

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GROUP 3600

Sir:

We are transmitting herewith the attached correspondence relating to this application:

Transmittal sheet containing Certificate of Facsimile
 Response and Request for Reconsideration (25 pgs.)

Please apply any charges not covered, or any credits, to Deposit Account No. 50-1778.

Date:

October 23, 2002

By:

Kent J. Sieffert

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770/Response (E)
S. Lewis
10/28/02

BOX AF
RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3629

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Lalitha Vaidyanathan; John Quinn; Ahmed Khaishgi; Cara Cherry	Examiner:	Naresh Vig
Serial No.:	09/504,159	Group Art Unit:	3629
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CERTIFICATE UNDER 37 CFR 1.8: I hereby certify that this correspondence is being deposited via facsimile with the Commissioner for Patents, Washington, D.C. 20231 on Oct. 23, 2002.

By: Samantha J. Rupert

Name: Samantha J. Rupert

RESPONSE AND REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.116

BOX AF
 Commissioner for Patents
 Washington, D.C. 20231

Dear Sir:

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OCT 23 2002

GROUP 3600

OFFICIAL

REMARKS

This request for reconsideration is responsive to the Final Office Action dated August 29, 2002. Claim(s) 1-31 and 56-74 are pending.

Claim Rejections Under 35 U.S.C. § 102

In the Office Action, the Examiner finally rejected claims 1, 3-5, 22-24 and 73 under 35 U.S.C. 102(e) as being unpatentable over U.S. Patent 5,895,450 to Marshall A. Sloo (herein "Sloo"). Applicants respectfully traverse these rejections. Sloo fails to disclose or suggest the

inventions defined by Applicants' claims, and provides no teaching that would have suggested the desirability of modification to arrive at the claimed inventions.

For example, Sloo does not disclose or even remotely suggest "applying a case-based reasoning system to the case information to produce a result for use in selection of a mode of resolving the dispute," as recited by Applicants' independent claim 1, and required by Applicants' claims 3-5, 22-24 and 73, which depend from claim 1. In contrast to this requirement of Applicants' claims, Sloo discloses "comparing the characteristics from the current record to characteristics from data records from previously resolved complaints to arrive at an appropriate judgment."¹ In other words, Sloo discloses this function as occurring after the mode of resolving the dispute has already been selected by a user. This is entirely counter to Applicants' claims that recite application of a case-based reasoning system to produce a result for use in selection of a mode of resolving the dispute. As described in the specification, for example, a user may elect one of a number of different options for resolving the dispute based on the result.

The Examiner's final rejection of claim 1 fails to address this important difference between the disclosure of Sloo and this requirement of Applicants' claims, which was brought to the Examiners' attention in Applicants' Amendment received July 12, 2002. In fact, it is unclear to Applicants' whether the Examiner has addressed this element, and other elements of Applicants' claims, at all before finally rejecting the claims. As one example, nowhere within his rejection of claim 1 has the Examiner identified which pages or passages of Sloo the Examiner believes to be a disclosure of "applying a case-based reasoning system to the case information to produce a result for use in selection of a mode of resolving the dispute." Moreover, in light of the Examiner's acknowledgment in his rejection under 35 U.S.C. § 103 of Applicants' independent claim 56, that "Sloo does not disclose to compare facts of previously resolved disputes for selection of mode for resolving the dispute," Applicants respectfully submit that Sloo fails to teach every limitation of independent claim 1. Final Office Action, p. 12.

Consequently, Sloo fails to disclose each and every limitation set forth in claims 1, 3-5, 22-24 and 73. For at least these reasons, the Examiner has failed to establish a *prima facia* case

¹ Sloo discloses the function of comparing the characteristics from the current record to characteristics from data records from previously resolved complaints only in conjunction with a third option – the "Automatic Negotiator" [which] allow[s] the system to determine a resolution to the dispute." See column 7, lines 37-39.

for anticipation of Applicant's these claims under 35 U.S.C. 102(e). Withdrawal of these rejections is requested.

Claim Rejections Under 35 U.S.C. § 103

Claims 56-57, 60, 64-65 and 68

In the Office Action, the Examiner finally rejected claims 56-57, 60, 64-65 and 68 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants' claims 56-57, 60, 64-65 and 68, and provides no teaching that would have suggested the desirability of modification to arrive at the claimed invention. For example, as acknowledged by the Examiner, Sloo fails to disclose or even suggest "comparing the case information to facts of previously resolved disputes to produce a result for use in selection of a mode of resolving a dispute," as recited in Applicants' independent claims 56 and 64. See Final Office Action, p. 12.

The Examiner cites no other reference that discloses or suggests this requirement of claims 56-57, 60, 64-65 and 68, or provides a teaching that would have suggested the desirability of modification to arrive at this requirement of claims 56-57, 60, 64-65 and 68 in combination with Sloo. In the absence of such a reference, the Examiner appears to have attempted to fill this gap in the evidentiary record by relying on what the Examiner believes to be common knowledge in the art. However, at the time of Applicants' invention there was no common knowledge in the art of electronic dispute resolution teaching or even suggesting "comparing the case information to facts of previously resolved disputes to produce a result for use in selection of a mode of resolving a dispute," or that would have suggested the desirability of modifying the system disclosed in Sloo to include "comparing the case information to facts of previously resolved disputes to produce a result for use in selection of a mode of resolving a dispute." Applicants seasonably and respectfully traverse these rejections.

It is well established that the Examiner bears the burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). In doing so, the Examiner must determine whether the prior art provides a "teaching or suggestion to one of ordinary skill in the art to make the changes that would produce" the claimed invention. *In re*

Chu, 36 USPQ2d 1089, 1094 (Fed. Cir. 1995). A *prima facie* case of obviousness is established only when this burden is met.

The Court of Appeals for the Federal Circuit recently addressed the evidentiary standard required to uphold an obviousness rejection in the case of *In re Lee*, 61 USPQ2d 1430 (CAFC 2002). In that case, the Federal Circuit stated: “[the] factual question of motivation is material to patentability, and (can) not be resolved on subjective belief and unknown authority. *Id.* at 1434. This finding must be based upon substantial evidence, and not subjective musings or conjecture by the Examiner. *Id.* Deficiencies in the evidentiary record cannot be cured by general conclusions such as “general knowledge” or “common sense.” *Id.* at 1435. Accordingly, the Examiner cannot rely on unsupported, conclusory statements to close holes in the evidentiary record. *Id.*

The Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate the features of Applicants’ claims within the disclosure of Sloo. For example, the Examiner has not even provided a reference that substantiates the existence of a system that “compar[es] the case information to facts of previously resolved disputes to produce a result for use in selection of a mode of resolving a dispute,” at the time of Applicants’ filing, much less evidentiary support of motivation to combine this feature into the system disclosed in Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

In the absence of an adequate evidentiary record, the Examiner bases the final rejections of Applicants’ claims 56-57, 60, 64-65 and 68 on just the sort of unsupported, conclusory statements prohibited by the Federal Circuit in *In re Lee*. For example, in rejecting claim 56, the Examiner, after conceding that “Sloo does not disclose to compare facts of previously resolved disputes for selection of mode for resolving the dispute,” concludes that “[i]t would have been obvious...to provide efficient resolution to the dispute (when a resolution is available) to save cost by resolving disputes in an efficient manner.” Final Office Action pp. 12-13. The Examiner’s logic is somewhat circular, and does little to address the deficiencies within the prior art in general, and Sloo in particular. Further it is apparent that the Examiner is improperly

finding motivation to modify Sloo to include this requirement of claims within Applicants' disclosure, which teaches that comparison of case information to facts of previously resolved disputes to produce a result for use in selection of a mode of resolving a dispute may lead to efficient dispute resolution. See Application, pp. 4 and 8; Lee at p. 1434 ("it is improper to use that which the inventor taught against its teacher.") (citation and quotations omitted).

The Examiner appears to have attempted to fill this gap in the evidentiary record by relying on what the Examiner believes to be common knowledge in the art. See MPEP § 2144.03. To that end the Examiner constructs a hypothetical involving a customer returning goods to a store. Final Office Action, p. 13. The relevance of this hypothetical to electronic dispute resolution is questionable. Moreover, the hypothetical at best illustrates that at the time of Applicants' invention it was known that disputes can be resolved in different ways.

However, at the time of Applicants' invention there was no common knowledge in the art of electronic dispute resolution teaching or even suggesting "comparing the case information to facts of previously resolved disputes to produce a result for use in selection of a mode of resolving a dispute," or that would have suggested the desirability of modifying the system disclosed in Sloo to include "comparing the case information to facts of previously resolved disputes to produce a result for use in selection of a mode of resolving a dispute." The Examiner's reliance on this hypothetical illustrates that, at the time of Applicants' invention, this requirement of Applicants' claims was not common knowledge. Having seasonably traversed these rejections that are based on common knowledge, Applicants respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicant's claims 56-57, 60, 64-65 and 68 and under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

Claim 2

In the Office Action, the Examiner finally rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the invention defined by claim 2, and provides no teaching that would have suggested the desirability of modification to arrive at the claimed invention. Specifically, Sloo fails to disclose or suggest "automatically selecting one

of two modes of resolving the dispute," as recited in claim 2, and provides no teaching that would have suggested the desirability of modification of Sloo to include this requirement of claim 2.

As acknowledged by the Examiner, Sloo fails to disclose "automatically selecting one of two modes of resolving the dispute," as recited in claim 2. See Final Office Action, p. 5. However, the Examiner appears to conclude that Sloo would suggest this requirement of claim 2 to one skilled in the art, stating that because "Sloo discloses that the 'Automatic Decision Maker' program receives data records from previously resolved complaints to evaluate the information to arrive at a proposed solution to the current question or dispute...it is known at the time of invention to a person with ordinary skills in the art to first execute the "Automatic Decision Maker' to give the resolution to user's dispute more efficiently, and, if automatic resolution cannot be made, use other disclosed means." Final Office Action, p. 5-6. In so concluding, the Examiner appears to have misunderstood this requirement of claim 2, the disclosure of Sloo, or both.

In contrast to this requirement of claim 2, Sloo discloses that the user selects a mode for resolving the dispute. In particular, Sloo discloses an apparatus that "allows the user to proceed by selecting one of the following options: 'Negotiate the Complaint' to allow the user and subject to enter into private negotiations in an attempt to resolve the complaint; 'Request a Judge/Jury' to allow either the user or the subject to request intervention by a third party to resolve the dispute; 'Automatic Negotiator' to allow the apparatus to determine the resolution to the dispute; and 'Appeal a Decision' to allow either party to appeal a decision that was rendered using either of the three previous settlement options." Sloo, column 7, lines 32-41. Further, in each instance where the disclosure of Sloo discusses these dispute resolution modes in greater detail, the disclosure refers to user selection of the mode. See Sloo, column 7, l. 42, column 8, l. 5, column 9, l. 57, column 10, lines 40 and 48.

Sloo disclosure of an "Automatic Decision Maker" that the Examiner refers to does not suggest automatic selection of a mode. "If the user selected the 'Automatic Decision Maker,' [the apparatus] provides users with an appropriate solution to a current question or dispute based on a comparison of characteristics from the current question or dispute with characteristics from the data records of previously resolved complaints. Sloo, column 11, lines 28-32. Clearly, the

“Automatic Decision maker disclosed in Sloo is in no way related to selection of a mode for resolving a dispute, much less automatic selection of a mode for resolving a dispute.

Nowhere within the disclosure of Sloo is it stated or suggested “to first execute the “Automatic Decision Maker” to give the resolution to user’s dispute more efficiently, and, if automatic resolution cannot be made, use other disclosed means,” as stated by the Examiner. Further, this use of the “Automatic Decision Maker” proposed by the Examiner is not in any way that is apparent to Applicants related to selection of a mode for resolving a dispute, much less automatic selection of a mode. Therefore, even assuming that Sloo would suggest this use of the “Automatic Decision Maker” to one skilled in the art, Sloo would not suggest this requirement of Applicants’ claim 2.

The Examiner cites no other reference that suggests this requirement claim 2, or provides a teaching that would have suggested the desirability of modification to arrive at this requirement of claim 2 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate this requirement of Applicants’ claim within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity. To the extent that the Examiner is basing the final rejection of claim 2 on common knowledge, Applicants seasonably traverse this rejection, and respectfully request that the Examiner cites a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant’s claim 2 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

Claims 58 and 66

In the Office Action, the Examiner finally rejected claims 58 and 66 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants’ claims 58 and 66, and provides no teaching that would have suggested the desirability of modification to arrive at the claimed invention. In particular, Sloo fails to disclose

or even suggest “presenting the outcomes of identified previously resolved disputes,” as recited in Applicants’ claims 58 and 66.

It is unclear to Applicants whether the Examiner has even addressed this requirement of Applicants’ claims. Nowhere in the Examiner’s *en masse* rejection of claims 57-71 does the Examiner call out this requirement. The passages of Sloo cited by the Examiner certainly do not support the rejection. As acknowledged by the Examiner, in contrast to this requirement of Applicants’ claims, Sloo discloses compar[ing] the characteristics from the current question or dispute with the characteristics from the data records for previously resolved complaints to arrive at an appropriate solution.” Sloo, column 11, lines 21-36; Final Office Action, p. 13. Clearly, Sloo does not disclose “presenting the outcomes of identified previously resolved disputes,” as recited in Applicants’ claims 58 and 66.

The Examiner cites no other reference that discloses or suggests this requirement of claims 58 and 66, or provides a teaching that would have suggested the desirability of modification to arrive at this requirement of claims 58 and 66 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate this requirement of Applicants’ claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity. To the extent that the Examiner is basing these final rejections on common knowledge, Applicants seasonably traverse these rejections, and respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant’s claims 58 and 66 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

Claims 59 and 67

In the Office Action, the Examiner finally rejected claims 59 and 67 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants’ claims 59 and 67, and provides no teaching that would have suggested the

desirability of modification to arrive at the claimed invention. As acknowledged by the Examiner, Sloo fails to disclose or even suggest “summarizing the outcome of identified previously resolved disputes,” as recited in Applicants’ claims 59 and 67.

The Examiner cites no other reference that discloses or suggests this requirement of claims 59 and 67, or provides a teaching that would have suggested the desirability of modification to arrive at this requirement of claims 59 and 67 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate this requirement of Applicants’ claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

In the absence of such a reference, the Examiner appears to have again attempted to fill this gap in the evidentiary record by relying on what the Examiner believes to be common knowledge in the art. In rejecting claims 57-71, the Examiner, after conceding that “Sloo does not disclose to summarize the results,” concludes that “[i]t is known at the time of invention...that stores are sometimes give choice of solutions to resolve the dispute to keep customers happy by allowing them to select a resolution...[f]or example, when the customer wants to return the defective product and has a receipt, customer service representative may give a choice like we can refund the money, mail the check (often done when the customer had paid by the check), or, give you store credit.” Final Office Action, pp. 13-14. Again, the relevance of such a hypothetical to electronic dispute resolution is questionable. Further, Applicants are having difficulty seeing how the hypothetical address Applicants’ claims, which require “summarizing the outcome of identified previously resolved disputes,” at all. Having seasonably traversed these rejections that are based on common knowledge, Applicants respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant’s claims 59 and 67 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

Claims 6, 61-63 and 69-71

In the Office Action, the Examiner finally rejected claims 6, 61-63 and 69-71 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants' claims 6, 61-63 and 69-71, and provides no teaching that would have suggested the desirability of modification to arrive at these claimed inventions. As acknowledged by the Examiner, Sloo fails to disclose or even suggest "presenting one or more likely outcomes and associated probabilities of occurrence to the parties," as recited in Applicants' claim 6. Final Office Action, p. 6. Further, Sloo fails to disclose or even suggest "presenting at least one likely outcome to the parties," as recited in claims 61 and 69, "presenting associated probabilities of occurrence of the at least one likely outcome to the parties," as recited in claims 62 and 70, or "presenting the at least one likely outcome to the parties as a potential resolution of the dispute," as recited in claims 63 and 71.

The Examiner cites no other reference that discloses or suggests these requirements of claims 6, 61-63 and 69-71, or provides a teaching that would have suggested the desirability of modification to arrive at these requirements of claims 6, 61-63 and 69-71 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

With respect to the final rejection of claim 6, the Examiner appears to have again attempted to fill this gap in the evidentiary record by relying on what the Examiner believes to be common knowledge in the art. In rejecting claim 6, the Examiner, after conceding that "Sloo does not disclose one or more likely outcomes," concludes that "[i]t is known at the time of applicants invention...[that] complainants may be provided with one or more resolutions...." Final Office Action, p. 6. The Examiner again refers to a hypothetical involving a customer returning goods and a customer service representative, which, as argued above, is of questionable relevance to electronic dispute resolution. *Id.* The Examiner's rejection, which is evidently based on knowledge in the art that disputes may be resolved in more than one way, does not

address Applicants' claim 6, which requires "presenting one or more likely outcomes and associated probabilities of occurrence to the parties."

It is unclear to Applicants whether the Examiner has even addressed the requirements of claims 61-63 and 69-71 in the Examiner's *en masse* rejection of claims 57-71. Final Office Action pp. 13-14. The Examiner appears to base these rejections on the same common knowledge applied to claim 6, again referring to the hypothetical involving a customer and customer service representative. Applicants respectfully traverse these rejections for at least the reasons discussed above with reference to the rejection of claim 6. *Id.* Having seasonably traversed these rejections that are based on common knowledge, Applicants respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant's claims 6, 61-63 and 69-71 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

Claims 7-10

In the Office Action, the Examiner finally rejected claims 7-10 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants' claims 7-10, and provides no teaching that would have suggested the desirability of modification to arrive at these claimed inventions. For example, Sloo fails to disclose or even suggest "receiving settlement positions from the parties," as recited in Applicants' claim 7, or "automatically settling the dispute if the settlement positions satisfy a predetermined criteria," as recited in Applicants' claim 8.

In contrast to these requirements of Applicants' claims 7-10, Sloo discloses that the complainant may "establish a settlement...that the complainant would accept to settle the dispute," which is "communicated to the subject of the complaint...so that the subject could accept or refuse the offer." Sloo, column 7, line 66 – column 8, line 4. Clearly, Sloo does not disclose or suggest receiving more than one settlement position from more than one party. Moreover, Sloo does not disclose or suggest automatically settling the dispute based on the received settlement positions.

The passage of Sloo relating to the "Automatic Decision Maker" that was cited by the Examiner in rejecting claims 8-10 is not relevant to these claims, and is completely unrelated to the disclosure of Sloo discussed in the preceding paragraph. The "Automatic Decision Maker" disclosed by Sloo provides a user with a proposed solution to a question or potential dispute provided by the user based on a comparison of characteristics of the question or potential dispute and characteristics from data records of previously resolved complaints. See Sloo, column 11, lines 21-37. The "Automatic Decision Maker" disclosed by Sloo does not interact with more than one party to a dispute, does not receive settlement positions from these parties, and does not automatically settle a dispute between the parties based on the received settlement positions. Moreover, the "Automatic Decision Maker" disclosed by Sloo is not even related to settlement of an actual dispute between parties. Combining these two unrelated disclosures of Sloo that were cited by the Examiner does not yield or suggest the requirements of Applicants' claims, nor would one skilled in the art have been motivated to make this combination.

The Examiner cites no other reference that discloses or suggests the requirements of claims 7-10, or provides a teaching that would have suggested the desirability of modification to arrive at the requirements of claims 7-10 in combination with Sloo. For example, the Examiner has not even provided a reference that substantiates the existence of a system that "receiv[es] settlement positions from the parties," or "automatically settl[es] the dispute if the settlement positions satisfy a predetermined criteria" at the time of Applicants' filing, much less evidentiary support of motivation to combine these features into the system disclosed in Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity. Further, to the extent that the Examiner bases these rejections on common knowledge in the art, Applicants respectfully traverse these rejections, and, having seasonably traversed these rejections that are based on common knowledge, respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant's claims 7-10 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

Claim 11

In the Office Action, the Examiner finally rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants' claim 11, and provides no teaching that would have suggested the desirability of modification to arrive at this claimed invention. For example, Sloo fails to disclose or even suggest that "the dispute resolution specialist resolves the dispute by transitioning from a mediation stage to an arbitration stage," as recited in Applicants' claim 11.

In contrast to this requirement of Applicants' claim 11, the "Request a Judge/Jury" disclosure of Sloo referenced by the Examiner in rejecting claim 11 discloses that a "judge or jurors ... review all of the information regarding the complaint and issue their judgment." Thus, Sloo does not disclose that the judge or jurors mediate, much less transition from a mediation stage to an arbitration stage.

The Examiner cites no other reference that discloses or suggests this requirement of claim 11, or provides a teaching that would have suggested the desirability of modification to arrive at this requirement of claims 11 in combination with Sloo. For example, the Examiner has not even provided a reference that substantiates the existence of a system wherein "the dispute resolution specialist resolves the dispute by transitioning from a mediation stage to an arbitration stage" at the time of Applicants' filing, much less evidentiary support of motivation to combine this feature into the system disclosed in Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity. Further, to the extent that the Examiner bases these rejections on common knowledge in the art, Applicants respectfully traverse these rejections, and, having seasonably

traversed these rejections that are based on common knowledge, respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant's claim 11 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

Claims 12 and 13

In the Office Action, the Examiner finally rejected claims 12 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants' claims 12 and 13, and provides no teaching that would have suggested the desirability of modification to arrive at these claimed inventions. As acknowledged by the Examiner, Sloo fails to disclose or even suggest that "the dispute resolution specialist generates a final recommended resolution," as recited in Applicants' claim 12, or that "the final recommended resolution is accepted by the one or more parties," as recited in Applicants' claim 13. Final Office Action, p. 7.

The Examiner cites no other reference that discloses or suggests these requirements of claims 12 and 13, or provides a teaching that would have suggested the desirability of modification to arrive at these requirements of claims 12 and 13 in combination with Sloo. For example, the Examiner has not even provided a reference that substantiates the existence of a system wherein "the dispute resolution specialist generates a final recommended resolution", or wherein "the final recommended resolution is accepted by the one or more parties," at the time of Applicants' filing, much less evidentiary support of motivation to combine these features into the system disclosed in Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

In the absence of such a reference, the Examiner appears to have again attempted to fill this gap in the evidentiary record by relying on what the Examiner believes to be common knowledge in the art. In rejecting claims 12 and 13, the Examiner concludes that “[i]t is known at the time of applicant’s invention that users of a service have to abide with the rules and regulations of the service provider...[i]f the service provider has mandated that the judgment received will be the final judgment, then, both the user and the subject have to agree to accept the requirements of the service provider before they begin to use the system,” and cites the TV show “Peoples Court” as an example of this common knowledge. Final Office Action, p. 7. The relevance of the “Peoples Court” to electronic dispute resolution is questionable. Further, Applicants are having difficulty seeing how the supposed common knowledge that rules and regulations of a service provider may be accepted by users of the service provided, and that judgments rendered in a television court may be final reaches Applicants’ claims, which require that “the dispute resolution specialist generates a final recommended resolution,” and that “the final recommended resolution is accepted by the one or more parties.” Moreover, these “facts” cited by the Examiner are not capable of instant and unquestionable demonstration as being “well-known,” as required by MPEP § 2144.03. For example, it is unknown to Applicants, and Applicants have not been able to verify if, in fact, “in the show ‘Peoples Court,’ the judgement received is accepted as a final offer by both the complainant and the plaintiff,” as stated by the Examiner. Having seasonably traversed these rejections that are based on common knowledge, Applicants respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant’s claim 11 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

Claims 15-19 and 72

In the Office Action, the Examiner finally rejected claims 15-19 and 72 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants’ claims 15-19 and 72, and provides no teaching that would have suggested the desirability of modification to arrive at these claimed inventions. As acknowledged by the

Examiner, Sloo fails to disclose or even suggest that "the communication mode is selected by the dispute resolution specialist," as recited in Applicants' claim 17, or "automatically selecting a communication mode based on the determination [of a current mode of resolving the dispute]," as recited in Applicants' claim 72. Final Office Action, pp. 8 and 14. Further, Sloo does not disclose or suggest "communicating among the parties in a plurality of communication modes," as recited in Applicants' claim 15, that "the communication modes include a public and a private mode," as recited in claim 16, "keeping communications between the specialist and the parties private," as recited in claim 18, or "keeping communications between the specialist and the parties public," as recited in claim 19.

In contrast to these requirements of Applicants' claims, Sloo a single, private communications mode between the parties, and does not disclose communication amongst the parties and the judge or jury. In the portion of Sloo dealing with the "Negotiate the Complaint" feature, Sloo discloses that this feature "prompts complainant or the subject to enter a private message and then stores the message in a private message area. This message area is reserved for use by the complainant and the subject and the messages entered are not posted in the public records so that the parties are encouraged to enter messages that may resolve the dispute without fear of public reaction to the messages. The program then notifies the complainant or the subject of the receipt of the message...so that the other party can read and respond to the message." Sloo, column 7, lines 57-67; see also Sloo, column 8, lines 5-49 (no discussion of communications between the parties and the judge or jury). Thus, it is clear that Sloo does not disclose or suggest "communicating among the parties in a plurality of communication modes," that "the communication modes include a public and a private mode," "keeping communications between the specialist and the parties private," or "keeping communications between the specialist and the parties public," much less that "the communication mode is selected by the dispute resolution specialist," or "automatically selecting a communication mode based on the determination [of a current mode of resolving the dispute]."

Once again, the Examiner cites no other reference that discloses or suggests these requirements of claims 15-19 and 72, or provides a teaching that would have suggested the desirability of modification to arrive at these requirements of claims 15-19 and 72 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the

Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

In rejecting claims 17 and 72, the Examiner appears to have again attempted to fill this gap in the evidentiary record by relying on what the Examiner believes to be common knowledge in the art. In rejecting claim 17, the Examiner concludes that “[i]t is known at the time of the invention...that the mode of communication is determined by the person handling the dispute dictated by the service provider (resolution specialist)...[i]f the history of the conversation among the parties, the resolution specialist may elect using postal mail, email, fax, telephone....” Final Office Action, p. 8. These “facts” cited by the Examiner are not capable of instant and unquestionable demonstration as being “well-known,” as required by MPEP § 2144.03. Further, in this case, the Examiner’s rejection is not even supported by an example that identifies situations in which the Examiner believes persons handling disputes selected a mode of communication from a plurality of communication modes. Thus, the Examiner’s rejection is based on just the sort of unsupported and conclusory statements prohibited by *In re Lee*. Applicants are left to wonder whether such situations even existed at all at the time of Applicants’ invention, much less whether the fact that a person handling a dispute selects a mode of communication from a plurality of communication modes was well known at that time.

In rejecting claim 72, the Examiner concludes that “[i]t is known at the time of the invention...that the parties involved in a dispute or discussion select mode of communication which is available to all the involved parties...if one of the parties involved does not have access to the internet available to them, then other modes of communication may be selected....” This rejection based on common knowledge is flawed for all the reasons discussed above with respect to the rejection of claim 17. Further, even if it were, as the Examiner argues, known that the parties select a communications mode, “automatically selecting a communication mode based on the determination [of a current mode of resolving the dispute],” as required by Applicants’ claims was not known.

The Examiner does not even address the deficiencies of Sloo with respect to claims 15-16 and 18-19. To the extent that the Examiner's obviousness rejections of these claims are based on the same sort of common knowledge applied to claims 17 and 72, Applicants seasonably traverse these the rejections of these claims as well for all the reasons discussed above. Having seasonably traversed these rejections that are based on common knowledge, Applicants respectfully request that the Examiner cite a reference in support of his position with regards to claims 15-19 and 72. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant's claims 15-19 and 72 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

Claims 20 and 21

In the Office Action, the Examiner finally rejected claims 20 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants' claims 20 and 21, and provides no teaching that would have suggested the desirability of modification to arrive at these claimed inventions. As acknowledged by the Examiner, Sloo fails to disclose or even suggest "providing visual clues to highlight agreements between the parties," as recited in Applicants' claim 20, or "visually highlighting areas of agreement or disagreement," as recited in Applicants' claim 21.

Once again, the Examiner cites no other reference that discloses or suggests these requirements of claims 20 and 21, or provides a teaching that would have suggested the desirability of modification to arrive at these requirements of claims 20 or 21 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

The Examiner has again attempted to fill this gap in the evidentiary record by relying on what the Examiner believes to be common knowledge in the art. In rejecting claims 20 and 21,

the Examiner concluded that "it is notoriously known that people use visual clues to highlight the portion of the document that require user's attention...web pages are known for using different fonts, making letters bold, blinking, different color, underline, etc." Final Office Action, pp. 8-9. However, even if it was well known to highlight portions of documents for various reasons, it was not well known to those skilled in the art of electronic dispute resolution at the time of Applicants' invention to highlight agreements between parties to a dispute. Nor would this alleged common knowledge or the disclosure of Sloo have motivated those skilled in the art of electronic dispute resolution to modify Sloo to incorporate this requirement of Applicants' claims 20 and 21. For example, in contrast to these requirements of Applicants' claims, Sloo discloses only that parties may exchange messages in a private message area. Sloo, column 7, lines 57-65. Thus, Sloo does not even disclose presenting to any party to the dispute the positions of multiple parties, much less provide any motivation to incorporate the alleged common knowledge of highlighting documents within this disclosure of Sloo to yield highlighting areas of agreement or disagreement between the parties as required by Applicants' claims. Applicants seasonably and respectfully traverse these rejections that are based on common knowledge, and respectfully request that the Examiner cite a reference in support of his position with regards to claims 20 and 21. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant's claims 20 and 21 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

Claims 25, 26 and 74

In the Office Action, the Examiner finally rejected claims 25, 26 and 74 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the inventions defined by Applicants' claims 25, 26 and 74, and provides no teaching that would have suggested the desirability of modification to arrive at these claimed inventions. As acknowledged by the Examiner, Sloo fails to disclose or even suggest "accessing data stored on the forum regarding performances of sellers and buyers that relates to compliance of a participant to the final decision made in the resolution of the dispute," as recited in Applicants' claim 25, "highlighting an

offender in the dispute resolution system," as recited in Applicants' claim 26, or "providing the data to an electronic marketplace," as recited in Applicants' claim 74.

Once again, the Examiner cites no other reference that discloses or suggests these requirements of claims 25, 26 and 74, or provides a teaching that would have suggested the desirability of modification to arrive at these requirements of claims 25, 26 and 74 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

The Examiner's rejection of claim 25 in the absence of such evidence is somewhat confusing. As an initial matter, Applicants cannot see the relevance of the two features of Sloo cited by the Examiner to Applicants' claim. That the apparatus disclosed by Sloo allows users to indicate support or opposition to a posted judgment, and allows a subject to accept or refuse a settlement offer, is not remotely related to "accessing data stored on the forum regarding performances of sellers and buyers that relates to compliance of a participant to the final decision made in the resolution of the dispute."

The Examiner then, once again, turns to what the Examiner believes to be common knowledge in the art in formulating these rejections. In particular, the Examiner again states that "[i]t is known at the time of applicant's invention that users of a service have to abide with the rules and regulations of the service provider...[i]f the service provider has mandated that the judgment received will be the final judgment, then, both the user and the subject have to agree to accept the requirements of the service provider before they begin to use the system," and cites the TV show "Peoples Court" as an example of this common knowledge. Final Office Action, p. 9. Applicants traverse this rejection for all the reasons discussed above with reference to claims 12 and 13. Further, once again, Applicants are having difficulty seeing how the supposed common knowledge that rules and regulations of a service provider may be accepted by users of the service provided, and that judgments rendered in a television court may be final reaches

Applicants' claim. That the decision may be final does not suggest applicants claim, which requires "accessing data stored on the forum regarding performances of sellers and buyers that relates to compliance of a participant to the final decision made in the resolution of the dispute.

In rejecting claims 26 and 74, the Examiner again relies on what the Examiner believes to be common knowledge in the art. In rejecting claim 26, the Examiner again cites the alleged "notorious" knowledge in the prior art to highlight portions of documents that require a user's attention. Final Office Action, p. 9. Applicants traverse this rejection for at least all of the reasons discussed above with reference to claims 20 and 21.

In rejecting claim 74, the Examiner concludes that "it is known at the time of invention that businesses sell their knowledge, research, mailing lists etc. to generate revenue." Even assuming that this was common knowledge at the time of Applicants' invention, this knowledge is far from a disclosure of the requirement of claim 74, i.e., "providing the data stored on the forum regarding the performances of buyers and sellers to an electronic marketplace." Nor would this common knowledge have suggested inclusion of the requirement of claim 74 within the disclosure of Sloo to one skilled in the art. Having seasonably traversed these rejections that are based on common knowledge, Applicants respectfully request that the Examiner cite references in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia case* for non-patentability of Applicant's claims 25, 26 and 74 under 35 U.S.C. 103(a). Withdrawal of these rejections is requested.

Claim 27

In the Office Action, the Examiner finally rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the invention defined by Applicants' claim 27, and provides no teaching that would have suggested the desirability of modification to arrive at this claimed invention. In particular, Sloo fails to disclose or even suggest "providing a market-based system for assigning a specialist to a particular dispute," as recited in claim 27. Applicants respectfully traverse this rejection.

In rejecting claim 27 as obvious, the Examiner cites no other reference that suggests this requirement claim 27, or provides a teaching that would have suggested the desirability of

modification to arrive at this requirement of claim 27 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate this requirement of Applicants' claim within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity. To the extent that the Examiner is basing the final rejection of claim 27 on yet unidentified common knowledge, Applicants seasonably traverse this rejection, and respectfully request that the Examiner cite a reference in support of his position. See MPEP § 2144.03.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant's claim 27 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

Claims 28-31

In the Office Action, the Examiner finally rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Sloo. Sloo fails to disclose or suggest the invention defined by Applicants' claim 27, and provides no teaching that would have suggested the desirability of modification to arrive at this claimed invention. As acknowledged by the Examiner, Sloo fails to disclose or even suggest that "the dispute resolution is provided as an insurance covering transactions," as recited in claim 28, "requiring a seller in a transaction to be a registered subscriber before a transaction is insured," as recited in claim 29, "showing a visual indicia to indicate membership in the dispute resolution process," as recited in claim 30, or that "the visual indicia is a medallion," as recited in claim 31.

Once again, the Examiner cites no other reference that discloses or suggests these requirements of claims 28-31, or provides a teaching that would have suggested the desirability of modification to arrive at these requirements of claims 28-31 in combination with Sloo. Therefore, the Examiner has not met the requirement of *In re Lee*, because the Examiner has not established an evidentiary record based on concrete prior art references that establish that it would have been obvious to a person with ordinary skill in the art to incorporate these

requirements of Applicants' claims within the disclosure of Sloo. At a bare minimum, Applicants must be afforded an opportunity to rebut any evidence, if such evidence exists. The current evidentiary record, however, does not even provide Applicants with that opportunity.

The Examiner's rejection of claim 28 in the absence of such evidence is based on a misinterpretation of claim 28. While the invention of claim 28 may be applied to all types of transactions and disputes, including insurance transactions and disputes, claim 28 is not, as the Examiner suggests, directed to a type of transaction or dispute. Instead, claim 28 requires that "the dispute resolution is provided as an insurance covering transactions." Therefore, the Examiner's citation of common knowledge that disputes may be of different types is not relevant to claim 28, and the rejection is respectfully traversed.

The Examiner's misinterpretation of claim 28 may have also effected his analysis of claim 29. The portions of the disclosure of Sloo cited by the Examiner in rejecting claim 29 are not relevant to claim 29. Creation of an email address for entry into a private forum and for acceptance of the response to a complaint is in no way related to "requiring a seller in a transaction to be a registered subscriber before a transaction is insured," as required by claim 29. Applicants respectfully traverse this rejection.

In rejecting claims 30 and 31, the Examiner again relies on what the Examiner believes to be common knowledge, stating that "[i]t is notoriously known at the time of the invention to a person with ordinary skill in the art that sellers display medallions showing their participation in several systems, groups, associations, etc...." Final Office Action, p. 11. However, even assuming it was common knowledge to display medallions at points of sale, the examiner provides no reference that would suggest combining this common knowledge with Sloo to yield Applicants claimed invention.

For at least these reasons, the Examiner has failed to establish a *prima facia* case for non-patentability of Applicant's claim 27 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested. Further, having seasonably and respectfully traversed these rejections of claims 28-31 that are based on common knowledge, Applicants respectfully request that Examiner cite a reference in support of his positions.

Claim 14

In the Office Action, the Examiner finally rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Sloo in view of U.S. Patent 6,330,551 to Burchetta et al. (herein "Burchetta"). The applied references fail to disclose or suggest the inventions defined by Applicants' claim 14, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. Applicants respectfully traverse this rejection.

Neither of the references applied by the Examiner disclose or suggest Applicants' claimed invention. As acknowledged by the Examiner, Sloo, does not even disclose or suggest creating a contract, much less "creating a contract between the one or more parties stating the willingness to abide by the recommended resolution [generated by the dispute resolution specialist]," as recited in Applicants' claim 14. The Examiner relies on Burchetta to supply this requirement.

Burchetta discloses a system that receives a number of settlement offers from a respondent and an equal number of demands from a complainant. Burchetta, column 2, lines 3-17. Each offer and demand correspond to a round as a pair, and the system compares the information corresponding to the series of demands and the series of offers on a round-by-round basis in accordance with reestablished conditions. If the demand and offer for a round satisfy the conditions, Burchetta discloses that a previously obtained user agreement binds the claimant to settle the claim for the amount specified by the on-line dispute settlement system based on the demand and offer. In other words, Burchetta does not disclose creating a contract between the one or more parties stating the willingness to abide by the resolution recommended by the dispute resolution specialist, as required by claim 14. Further, the Examiner has also identified no teaching in the prior art of a motivation to modify the Sloo disclosure to include the user agreement disclosed in Burchetta.

For at least these reasons, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicant's claim 14 under 35 U.S.C. 103(a). Withdrawal of this rejection is requested.

Conclusion

In conclusion, Applicants again respectfully request that the Examiner reconsider the finality of the rejections. Because the Examiner has failed to make a *prima facie* case of non-

patentability as to any of Applicants' pending claims under 35 U.S.C. § 102(e) or 35 U.S.C. § 103(a), Applicants believe that the finality of the rejections is premature. Applicants further believe that this application is in condition for allowance. Early notice to this effect is earnestly solicited. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

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